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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.460 OF 2016

Ashok s/o Ramrao Shelarkar,
Age: 65 years, Occ: Rickshaw Driver,
R/o. Kailasnagar, Aurangabad. ..PETITIONER

VERSUS

1. The State of Maharashtra,
2. Nandram s/o Bandu Bahure (Dead)
Age: 44 years, Occ: Agri.,
R/o. Kanchanpur,
Tq. & Dist. Aurangabad.
3. Mahajan s/o Bandu Bahure (Dead)
Age: 42 years, Occ: Agri.,
R/o. As above.
4. Harishcandra s/o Bandu Bahure,
Age: 39 years, Occ: Agri.,
As above.
5. Ramchandra s/o Bandu Bahure (Dead)
Age: 36 years, Occ: Agri.,
R/o. As above.
6. Dilip s/o Kachru Bahure,
Age: 42 years, Occ: Agri.,
R/o. As above. ..RESPONDENTS

Mr V.C. Patil, Advocate h/f Mr S.M. Godsay,
Advocate for petitioner;
Mr R.V. Dasalkar, A.P.P. for respondent No.1;
Mr R.R. Imale, Advocate for respondent Nos. 4 and 6

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CORAM : N.W. SAMBRE, J.**DATE : 20th SEPTEMBER, 2016****ORDER :**

The facts as are necessary for deciding the present writ petition are as under : -

One Sundar was blessed with two sons namely Ramrao and Anna. Present petitioner Ashok claimed to be son of deceased Ramrao, whereas Anna was blessed with son Bansi.

2. It is claimed in the complaint being Regular Criminal Case No. 635 of 1999 moved by the present petitioner before learned Judicial Magistrate, First Class, (Court No.8), Aurangabad that the land Gat No. 31/1 and 31/2 situated at village Kanchanpur, Taluka and District Aurangabad was owned by deceased Bansi and Ramrao. Since Bansi was not having any legal heir, he has every right to continue to be owner of the property of Bansi, who was born on 15th March, 1963 and died on

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21st April, 1984. It is then claimed that upon verification of the revenue record i.e. 7/12 extract, he noticed that the accused persons have entered their name as personal occupation of the land, so entered their name by demonstrating fictitious sale deed, which was claimed to have executed when Bansi was of 30 years of age. It is claimed that Bansi, at the relevant time, was minor. The accused persons have practiced fraud and got executed sale deed Exhibit-173 dated 15th October, 1977.

3. The charge came to be framed vide Exhibit-178 against the accused persons for an offence punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

4. So as to substantiate the guilt, present applicant examined himself at Exhibit-155, CW-2 Suresh Ingale at Exhibit-166, CW-3 Bhagwan Kadam at Exhibit-170, CW-4 Sahebrao Kharat at Exhibit-172, CW-5 Dhuraji Handke at Exhibit-174. Exhibit-156 is

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7/12 extract of land Gat No.31/1 and Exhibit-157 is 7/12 extract of land Gat No.31/2. Death certificate of Ramrao is at Exhibit-171, certified copy of registered sale deed at Exhibit-173, another death certificate of Ramrao is at Exhibit-175.

5. Learned Magistrate, after analyzing the evidence, acquitted the accused persons for an offences in question, vide verdict dated 12th October, 2009.

6. In the Court of Sessions, Criminal Misc. Application No. 89 of 2012 came to be moved stating therein delay caused in preferring the appeal, that is of about 650 days be condoned, which prayer came to be rejected by learned Sessions Judge vide his order dated 4th November, 2015. As such, present writ petition.

7. Mr. Patil, learned Counsel for the petitioner, while questioning the legality of the

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order impugned passed by learned Sessions Judge refusing to condone delay of 650 days in preferring the appeal, would urge that the appeal is statutory right conferred on the petitioner and if the delay would have condoned, no prejudice would have been caused to the present respondents-accused as they would have got fair chance to defend their case in appeal. He would took me through the cause as is appearing for seeking condonation of delay and according to him, bonafides of the petitioner are not taken into account.

8. Per contra, learned A.P.P. who appears for respondent-State opposed the prayer.

9. It is required to be noted from the record that the respondents-accused i.e. Nos. 1,2 and 4 are already reported to be dead, as such, present petition abates against respondent No. 2 Nandram, No.3 Mahajan and respondent No. 5 Ramchandra. It is then to be noted that the complaint case which was initiated came to to be decided on 12th

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October, 2009 on its merit. Though initially the petitioner agitated his grievance before the High Court, which was wrong forum, however, it is required to be noted that for the judgment delivered on 12th October, 2009, the petitioner applied for certified copy on 18th August, 2012 without citing any reasonable ground for such inordinate delay. Though ground of health is raised, however, in my opinion, there is hardly any material to infer that the petitioner was in such a bad health condition so that he was unable to approach the Court within a stipulated period of limitation.

10. Leave apart, the fact remains that learned Magistrate has proceeded to consider the claim of the petitioner qua allegation of forgery and other offence and upon appreciating the documentary and oral evidence, has recorded findings of acquittal.

11. The document in question, which is claimed to be forged one claimed to have executed on 15th October, 1977, for which the complaint came to be

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filed in 1999 i.e. almost after period of 20 years. Apart from above, the petitioner has produced death certificate of Ramrao at Exhibit-171 and 175, which speak of two dates of death of said Ramrao, for which there is no explanation from present petitioner. Apart from above, the complainant himself has come out with a case that land was given to the accused persons on 50% share. Apart therefrom, the testimony of petitioner was not sufficient to prove offence of forgery and the accused persons have used such document for the purpose of cheating by styling the same to be genuine. Witness PW-4 Sahebrao's testimony, in my opinion, was rightly discarded by learned Magistrate for the reasons stated in the order impugned.

12. No case, in my opinion, in extraordinary jurisdiction, is made out. As such, writ petition fails and stands dismissed.

(N.W. SAMBRE, J.)